Supreme Court, U.S.
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Docket No. 02-607

In The

Supreme Court of the United States

JOHN B. BELL

Petitioner,

v.

STATE OF NEW YORK, CHEMICAL BANK and CHASE MANHATTAN BANK, N.A.

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For the Second Circuit

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION FOR A WRIT FOR CERTIORARI

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RESPONDENTS' ALLEGATION, THAT THE PETITION HEREIN IS BARRED, FINDS NO SUPPORT EITHER IN FACT OR IN LAW.

The opposition to the granting of the writ herein, proffered by the respondents, demonstrates that their res judicata arguments are based on the *erroneous assumption* that petitioner's constitutional challenge to 8 NYCRR §2104.4 (eff. 4/12/77, repealed 8/27/96 and hereinafter referred to as the "Rule") and his allegation that it was unlawfully retroactively applied to his Student Loan Agreement, *constituted two separate proceedings*. The respondents argue that the judgment, entered in the Supreme Court, New York County (hereinafter the "State court"), on the 7th day of December, 1987, finally determined *Bell v. New York Higher Education Assistance Corporation,, et al.*, 138 Misc.2d 936, 526 N.Y.S.2d 319 (Sup.Ct. N.Y. Co. 1987) (hereinafter referred to as the "State action"). However, the State court record is to the contrary, and shows that the State action was the *only lawsuit* between the petitioner and the respondents. This being so, then

neither res judicata nor collateral estoppel is applicable, since res judicata requires that there be two separate proceedings (50 C.J.S. Judgments, §703) and collateral estoppel is not applicable in the same case (50 C.J.S. Judgments, §781).

The respondents' allegation that the judgment and permanent injunction in *Bell v. NYHEAC* constitutes a bar to the instant action, predicated upon the doctrine of *res judicata* and the principles of collateral estoppel, is not supported by the established facts, or by applicable law.

RESPONSIVE ARGUMENTS

I. RESPONDENTS' ARGUMENT, THAT THE INSTANT ACTION WAS PROPERLY DISMISSED UNDER THE ROOKER-FELDMAN RULE, IS UNTENABLE.

Petitioner filed suit in the District Court, alleging that his civil and constitutional rights to Due Process and the Equal Protection of the Law, were violated by the State court's *failure to adjudicate* constitutional issues raised in the State action. This allegation, that the case was brought because the State Court

failed to adjudicate issues raised in *Bell v. NYHEAC, irrefutably* establishes 1) that there is no judgment adjudicating the constitutional raised, and 2) *that there is no state court judgment which the District Court could have been asked to review.*

In the instant action, petitioner alleged that the "Rule", which the State court relied upon in granting the respondents summary judgment dismissing the State action as to them, was *unconstitutional,* on the ground that its promulgation constituted an unlawful exercise of legislative power by New York State Higher Education Services Corporation (NYHEAC's successor and hereinafter referred to as "NYSHESC") and exceeded the rule-making powers granted it by the New York State Legislature. To this very day, no court of the State of New York has ruled upon the constitutionality of the rule, or its unlawful retroactive application to petitioner's Student Loan Agreement.

It is evident from the record herein, that the Complaint filed in the District Court did not require said Court to review any State

court judgment. The fact of the matter is that admittedly, *there is no state court judgment* resolving the issues of the constitutionality of the Rule, and its unlawful retroactive application to petitioner's Student Loan Agreement. The instant case does not seek a review of a state court judgment, but asks only that petitioner's constitutional rights to Due Process and the Equal Protection of the Law be exonerated.

The Rooker-Feldman Rule divested the District Courts of jurisdiction to hear cases seeking the review of a state court judgment and "inextricably intertwined issues related thereto". In the instant case, no such judgment, or issues intertwined with issues determined by a state court exists. Therefore, the District Court erred in dismissing the instant action under the Rooker-Feldman Rule.

II. THE RESPONDENT'S ARGUMENT, THAT FULL FAITH AND CREDIT AND PRINCIPLES OF COMITY ALSO REQUIRES THE DENIAL OF THE INSTANT PETITION, IS ERRONEOUS.

A. The Granting of Full Faith And Credit to the State Court Injunction, Barring Petitioner From Re-litigating The Issues Resolved In Its Order Of December 7, 1987, Would Have No Effect On The Litigation In The Instant Case.

The respondents' argument, that the within Petition is barred under the Full Faith and Credit Clause, and the Rule of Comity, are contrary to law. At page 8 of their Brief, the respondents argue that:

> "Not only the Full Faith and Credit Clause of the Constitution, Article IV, §1, and 28 U.S.C. §1738 (1995 & Supp. 2000) ("State and Territorial Statutes and judicial proceedings; full faith and credit"), but the 'general federal law of res judicata' – *see, e.g., Winters v. Lavine*, 574 F.2d 46, 54-56 (2d Cir. 1978) and principles of comity require that (a) Justice Wilk's 1987 summary judgment decisions and the 1988-1989 affirmances thereof, dismissing

> Bell's claims based on his student loan agreement against Chase and NYSHESC on he merits, and (b) Justice Wilk's 1997 Order barring Bell from further relitigation on res judicata grounds, the Appellate Division's 1998 affirmance thereof, and the New York Court of Appeals' dismissal of he appeal therefrom, be given Full Faith and Credit. ...".

The respondents argue that the Court should give Full Faith and Credit to the State court judgment of December 7, 1987 and the injunction it issued, dated August 15, 1997 and predicated thereon, deny the instant Petition. The judgment of December 7, 1987 has no relevance in the instant case, as none of the issues resolved therein are in controversy here. The Complaint filed in the District Court specifically alleges *that the State court violated petitioner's constitutional rights to Due Process and the Equal Protection of the Law,* by failing to adjudicate issues raised in the State action, subsequent to the judgment of December 7, 1987. *Simply stated, there are no state court judgments involved in the*

instant case, to which a federal court would be required to give Full Faith and Credit or Comity. Whether the said State court judgments were or were not valid, is totally irrelevant in the instant case.

The District Court's dismissal of the instant action, pursuant to the Rooker-Feldman Rule, is not supported by the facts. The Circuit Court dismissal of petitioner's appeal, was improvident and premature, as there are a number of potentially meritorious issues to be adjudicated.

B. The State Court Injunction, Barring Further Litigation Of The Issues Resolved In The State Action On The Ground That Such Re-litigation was barred by *res judicata*, Is Illegal And Unenforceable.

The District Court, in its Order dismissing the action herein, made the State court injunction an issue, when it opined that, "Assuming arguendo that this Court were to find that it did have subject matter jurisdiction over plaintiff's claims... the claims against Chemical Bank and Chase would be precluded

by the doctrine of res judicata." (P. p. A-18-Footnote)

The validity of the State court injunction, must be tested under New York State Law, before a federal court can give it a preclusive effect. *E. D. Systems Corp. v. Southwestern Bell Telephone Co.*, 674 F.2d 453 (C.A. 5th Cir. Tex. 1982); *Ramie v. New York State Dept. of Health*, 741 F.Supp. 68 (S.D.N.Y. 1990). The State court injunction was illegally issued, in that it purports to bar further litigation of the State action, under the doctrine of res judicata. New York State's Law of Res Judicata, requires for its implementation, that there be an identity of issues, an identity of the parties, an earlier proceeding in which the claims sought to be barred were judicially resolved, and that there be a valid final order, adjudicating said issues on the merits.

The injunction lacks two at least two of the required essential elements for res judicata to apply, 1) there is no prior proceeding between the parties in which the issues resolved in the State action were finally

determined, and 2) there is no final valid judgment in which all the issues in the State action, were resolved. Lacking these *res judicata* elements, the defense fails and therefore, District Court erred in stating that it would give said judgment Full Faith and Credit.

Finally, the State court injunction *violated* State Law, which provides that an injunction, enjoining a *pro se* litigant from further litigation in the state courts, is improper *where the injunction does not permit him to institute an action or proceeding with prior judicial approval. People v. Hearse*, 253 A.D.2d 680, 677 N.Y.S.2d 470 (A.D. 1st Dept. 1998); *Spano v. Riley*, 242 A.D.2d 934, 665 N.Y.S.2d 364 (A.D. 4th Dept. 1997); *Lammer v. Lammer*, 235 A.D.2d 286, 652 N.Y.S.2d 288 (A.D. 1st Dept. 1997); *DuBroff v. Norych & Tallis*, 220 A.D.2d 480, 632 N.Y.S.2d 165 (A.D. 2d Dept. 1995).

The injunction herein speaks for itself and evidences that there is no such provision, permitting petitioner to institute an action or proceeding with prior judicial approval,

included therein (Pet. p. A23-A-26.). The injunction therefore is unlawful under State Law and a federal court cannot not give it Full Faith and Credit.

III. THE RESPONDENTS' ARGUMENT, THAT THE PETITION IS SUBJECT TO DENIAL ON COLLATERAL ESTOPPEL GROUNDS, IS FRIVOLOUS.

The respondents argue, at page 18 of their Brief, that the instant petition should be denied, on the ground that petitioner is collaterally estopped from bring it, because of a *"similar type"* §1983 civil right action he brought in 1985.

Collateral Estoppel requires for its application, that there must be an identity of issues (not *"types of cases"*) before its principles can be invoked. 50 C.J.S. Judgments, §781, provides in relevant part, that:

> "...Collateral estoppel requires for its application that there be two separate proceedings; *it does not apply to decisions in the same case.* Where there is only one lawsuit, one trial and one judgment, *the doctrine of*

> *issue preclusion cannot apply.*" (emphases added)

Collateral estoppel is inapplicable in this case because the elements of *identity of issue*, and *two separate proceedings*, are not present. The respondents seek to mask the absence of these elements, by arguing that this Court *vitiated* the requirement of these elements, in its ruling in *Blonder-Tongue Labs, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328, 91 S Ct. 1434, 1442, 28 L. Ed. 2d 788 (1971)(See Res.Br. at pp. 18-19.)

The respondents erroneously argue that:

> "...In *Blonder-Tongue Labs, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328, 91 S Ct. 1434, 1442, 28 L. Ed. 2d 788 (1971), this Court, deciding the 'broader question' of 'whether it is any longer tenable to afford a litigant more than one full and fair opportunity for judicial resolution of the same issue', state that permitting repeated litigation *of the same issue* against different defendants 'reflects either an aura of the gaming table or a 'lack of discipline and of

> disinterest on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure" ', quoting *Kerotest Mfg. Co. v. C-O-Two Co.*, 342 U.S. 180, 185, 72 S. Ct. 219, 222, 96 L. Ed. 200 (1952)." (emphases added)

Petitioner's first response to respondents' argument, is that they *lack standing* to raise the defense of collateral estoppel. *John B. Bell v. The State of New York and New York Law School* (hereinafter referred to as the "Law School Case") involved a *Scholarship dispute*, to which the respondents were neither a party, nor privy thereto. The *issues* resolved in the Law School Case are not identical to the issues raised in the instant action.

The respondents' reliance upon Blonder-Tongue Labs, Inc., is misplaced because in the aforesaid case, this Court did nothing more than *modify* the principle of mutuality of estoppel. The Court held that once a factual *issue* is judicially resolved against a plaintiff, he should not be permitted to re-litigate that issue anew each time there is

a different defendant. That once the issue of *fact* is judicially determined, it is determined for all purposes and a subsequent defendant defending against that issue of fact, may raise the defense of collateral estoppel even though he was not a party, or in privity with a party, in the action in which the issue was resolved.

Blonder-Tongue Labs. Inc. did not, as the respondents seem to be arguing, *change* the requirements of collateral estoppel, but expanded the identity of parties requirement, in a very narrow group of cases. The respondents' reliance on *Blonder-Tongue Labs, Inc.*, as their basis for invoking the principles of collateral estoppel to bar this Petition, is patently frivolous.

Additionally, the respondents are *in violation* of the Circuit Court's Order, which specifically prohibits the *use* or *citing* of the Law School case, in any unrelated actions. The *Nota Bene* appended to the Circuit Court's Order, reads as follows:

> "Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, *it shall*

> *not be reported, cited or otherwise used in unrelated cases before this or any other court.*" (Res.Br. at p. R.A.-3) (emphasis added)

The respondents' arguments in support of their assertion that the Petition should be dismissed on the ground of collateral estoppel, *is totally frivolous.*

IV. THE RESPONDENTS' ARGUMENT, THAT THE INSTANT PETITION IS UNTIMELY BECAUSE PETITIONER MISREPRESENED THE TIMING SEQUENCE OF THE CIRCUIT COURT'S RULING, IS REFUTED IN FACT AND IN LAW.

The respondents, at pages 19-23 of their Brief, allege that the Petition herein is untimely, because petitioner made *misrepresentations* to this Court as to the sequence and timing of the Circuit Court's rulings. The respondents argue that the 90-day period, within which time petitioner had to file this Petition, commenced upon the initial decision of the Circuit Court (January 4, 2002) and expired on April 5, 2002. The respondents relied upon the initial portion of subsection 3

of Rule 13 of this Court, which reads as follows:

> "The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice).

However, the respondents ignore in their argument, but emphasize in their citing of subsection 3, the following:

> "...But if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition of rehearing) *runs from the date of the denial of the petition for rehearing or*, if the petition for rehearing is granted, the subsequent entry of judgment.

Petitioner filed two *timely* petitions for a rehearing, the last of was decided on February 21, 2002. Under Rule 13-3 of this Court's Rule, there is nothing therein which prohibits more than one request for a

rehearing. Where a party timely files for a rehearing, the rule simply states that the time in which to file a writ for certiorari commences upon the date of the petitions denial, or if granted, on the date of the subsequent entry of judgment.

The respondents argument takes the provisions of subsection 3 out of context and attempts to add a *numerical restriction* on the number of timely made petitions for rehearing a party may make. If, within the rules of any lower court, a petition for rehearing is timely made, then part two, of subsection 3 of Rule 13 of this court, is applicable.

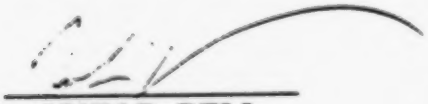
Petitioner respectfully contends that the respondents' timeliness argument is irrational and is inconsistent with Rule 13-3 of the rules of this Court.

CONCLUSION

Predicated upon the foregoing facts and legal arguments set forth in this Reply, and those set forth in the Petition filed herein, the Petition for a Writ of Certiorari should be GRANTED, and petitioner given such other,

fither and different relief as to the Court may seem just and proper in the premises.

Respectfully Submitted,



JOHN B. BELL

Dated: December 13, 2002